

111TH CONGRESS
1ST SESSION

S. 379

To provide fair compensation to artists for use of their sound recordings.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2009

Mr. LEAHY (for himself, Mr. HATCH, Mrs. FEINSTEIN, Mr. CORKER, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide fair compensation to artists for use of their sound recordings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Performance Rights
5 Act”.

6 **SEC. 2. EQUITABLE TREATMENT FOR TERRESTRIAL**
7 **BROADCASTS.**

8 (a) PERFORMANCE RIGHT APPLICABLE TO RADIO
9 TRANSMISSIONS GENERALLY.—Section 106(6) of title 17,
10 United States Code, is amended to read as follows:

1 “(6) in the case of sound recordings, to perform
 2 the copyrighted work publicly by means of an audio
 3 transmission.”.

4 (b) INCLUSION OF TERRESTRIAL BROADCASTS IN
 5 EXISTING PERFORMANCE RIGHT.—Section 114(d)(1) of
 6 title 17, United States Code, is amended—

7 (1) in the matter preceding subparagraph (A),
 8 by striking “a digital” and inserting “an”; and

9 (2) by striking subparagraph (A).

10 (c) INCLUSION OF TERRESTRIAL BROADCASTS IN
 11 EXISTING STATUTORY LICENSE SYSTEM.—Section
 12 114(j)(6) of title 17, United States Code, is amended by
 13 striking “digital”.

14 (d) ELIMINATING REGULATORY BURDENS FOR TER-
 15 RESTRIAL BROADCAST STATIONS.—Section 114(d)(2) of
 16 title 17, United States Code, is amended in the matter
 17 preceding subparagraph (A) by striking “subsection (f) if”
 18 and inserting “subsection (f) if, other than for a non-
 19 subscription and noninteractive broadcast transmission,”.

20 **SEC. 3. SPECIAL TREATMENT FOR SMALL, NONCOMMER-**
 21 **CIAL, EDUCATIONAL, AND RELIGIOUS STA-**
 22 **TIONS AND CERTAIN USES.**

23 (a) SMALL, NONCOMMERCIAL, EDUCATIONAL, AND
 24 RELIGIOUS RADIO STATIONS.—

1 (1) IN GENERAL.—Section 114(f)(2) of title 17,
2 United States Code, is amended by adding at the
3 end the following:

4 “(D) Notwithstanding the provisions of sub-
5 paragraphs (A) through (C), each individual terres-
6 trial broadcast station that has gross revenues in
7 any calendar year of less than \$1,250,000 may elect
8 to pay for its over-the-air nonsubscription broadcast
9 transmissions a royalty fee of \$5,000 per year, in
10 lieu of the amount such station would otherwise be
11 required to pay under this paragraph. Such royalty
12 fee shall not be taken into account in determining
13 royalty rates in a proceeding under chapter 8, or in
14 any other administrative, judicial, or other Federal
15 Government proceeding.

16 “(E) Notwithstanding the provisions of sub-
17 paragraphs (A) through (C), each individual terres-
18 trial broadcast station that is a public broadcasting
19 entity as defined in section 118(f) may elect to pay
20 for its over-the-air nonsubscription broadcast trans-
21 missions a royalty fee of \$1,000 per year, in lieu of
22 the amount such station would otherwise be required
23 to pay under this paragraph. Such royalty fee shall
24 not be taken into account in determining royalty
25 rates in a proceeding under chapter 8, or in any

1 other administrative, judicial, or other Federal Gov-
 2 ernment proceeding.”.

3 (2) PAYMENT DATE.—A payment under sub-
 4 paragraph (D) or (E) of section 114(f)(2) of title
 5 17, United States Code, as added by paragraph (1),
 6 shall not be due until the due date of the first roy-
 7 alty payments for nonsubscription broadcast trans-
 8 missions that are determined, after the date of the
 9 enactment of this Act, under such section 114(f)(2)
 10 by reason of the amendment made by section 2(b)(2)
 11 of this Act.

12 (b) TRANSMISSION OF RELIGIOUS SERVICES; INCI-
 13 DENTAL USES OF MUSIC.—Section 114(d)(1) of title 17,
 14 United States Code, as amended by section 2(b), is further
 15 amended by inserting the following before subparagraph
 16 (B):

17 “(A) an eligible nonsubscription trans-
 18 mission of—

19 “(i) services at a place of worship or
 20 other religious assembly; and

21 “(ii) an incidental use of a musical
 22 sound recording;”.

23 **SEC. 4. AVAILABILITY OF PER PROGRAM LICENSE.**

24 Section 114(f)(2)(B) of title 17, United States Code,
 25 is amended by inserting after the second sentence the fol-

1 lowing new sentence: “Such rates and terms shall include
2 a per program license option for terrestrial broadcast sta-
3 tions that make limited feature uses of sound recordings.”.

4 **SEC. 5. NO HARMFUL EFFECTS ON SONGWRITERS.**

5 (a) **PRESERVATION OF ROYALTIES ON UNDERLYING**
6 **WORKS.**—Section 114(i) of title 17, United States Code,
7 is amended in the second sentence by striking “It is the
8 intent of Congress that royalties” and inserting “Royal-
9 ties”.

10 (b) **PUBLIC PERFORMANCE RIGHTS AND ROYAL-**
11 **TIES.**—Nothing in this Act shall adversely affect in any
12 respect the public performance rights of or royalties pay-
13 able to songwriters or copyright owners of musical works.

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